THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 5657 of 2006

O r d e r:

Petitioner No.1, namely Karan Woosin Limited Employees' Union, represented by its President and petitioner Nos. 2 and 3, laid off workman in their individual capacity, have filed this writ petition assailing the notice dated 31.01.2002, issued calling upon the petitioners to appear before the Additional Commissioner, and the final orders dated 07.02.2002, passed by respondent No.2, granting permission to respondent No. 5, namely M/s. Karan Woosin Limited, to lay off 24 workmen, and the order dated 23.07.2005, confirming the orders dated 07.02.2002, as being without jurisdiction, illegal, arbitrary and violative of the principles of natural justice.

Petitioner Nos. 2 and 3 are workmen, working in respondent No. 5 – company, while petitioner No. 1 is the Employees' Union in the company. Respondent No. 5, it appears made an application dated 18.01.2002 to the Commissioner of Labour, to grant permission to lay off 24 workmen. Acting on the said application, the Commissioner of Labour, issued notice dated 31.01.2002 calling upon the petitioners to appear before respondent No. 3, namely the Additional Commissioner. Accordingly, the petitioners appeared before respondent No. 3 on 05.02.2002, and upon hearing the petitioners as well as respondent No. 5, respondent

No. 3 circulated the file to respondent No. 2, who vide orders dated 07.02.2002, granted permission to respondent No. 5 to layoff 24 workmen. Aggrieved thereby, the petitioners filed review petition on 13.02.2002 before respondent No. 3, and when the said order was sought to be reviewed by issuing notice dated 07.03.2002, respondent No. 5 filed writ petition in W.P. No. 5058 of 2002, and this Court by order dated 01.12.2003, disposed of the said writ petition with a direction to the specified authority i.e., the Commissioner of Labour, to take up the review petition, preferred by the petitioners. Assailing the said order, respondent No. 5 filed writ appeal in W.A. No. 970 of 2002, and a Division Bench of this Court, vide judgment dated 07.07.2004, while disposing of the writ appeal, set aside the notice dated 07.03.2002 and gave liberty to the Commissioner of Labour to issue

fresh notice, if he felt that the order dated 07.02.2002 needed review. Pursuant to the judgment of the Division Bench in writ appeal, respondent No. 2 by reason of the order dated 23.07.2005, reviewed the order dated 07.02.2002, and confirmed the same. Hence, assailing the aforesaid orders, the petitioners filed the present writ petition.

The learned counsel for the petitioners submits that the Commissioner of Labour, is not the "specified authority" notified by the Government under Section 25-M(1) of the Industrial Disputes Act, 1947 (for short 'the Act'), and as such, the impugned orders passed by the Commissioner of Labour, are without jurisdiction. He submitted that the ground on which respondent No.2 had granted permission to respondent No. 5, namely "accumulated losses" for laying off 24 workmen, is not a ground mentioned in Section 2(kkk) of the Act, and as such, the impugned order cannot be sustained. He submitted respondent No. 2 has passed the orders dated 07.02.2002 without hearing the parties, and this is evident from the fact that respondent No. 3 after hearing the parties had circulated the file to respondent No.2, who upon perusing the same, passed the said order. As respondent No.2 passed the impugned order without hearing the parties, the same suffers from the vice of violation of principles of natural justice. He submitted that having regard to the provisions of Section 25-M(7) of the Act, respondent No.2 ought to have caused the matter referred to a Tribunal for adjudication, and in support of this contention, he placed reliance on the judgment of this Court in **Voltas Limited v. Government of A.P.**[1].

On the other hand, the learned counsel for the respondents that the "specified authority" notified by the Government, is respondent No.2, namely Commissioner of Labour, and the Commissioner of Labour being the specified authority, has reviewed the order dated 07.02.2002, and confirmed the same by reason of the impugned order dated 23.07.2002, and no interference is called for therewith.

Heard the learned counsel for the petitioner and the learned counsel for the respondents.

Though the petitioner contends that the "specified authority" notified by the Government, is not the Commissioner of Labour, the fact remains, which the petitioners cannot dispute, this Court while disposing of the writ petition in W.P. No. 5058 of 2002, filed by

respondent No.5 assailing the notice dated 07.03.2002, issued by respondent No.3, observed that the power to review the order dated 07.02.2002 is vested in the Commissioner was not in dispute, and the Commissioner being the specified authority, directed him to take up the review petition. Thus, it is clear that the "specified authority" being the Commissioner of Labour, is entitled to review the order. Respondent No.2, namely the Commissioner of Labour, being the specified authority, he cannot be said to have the power or no jurisdiction to review the order passed by him. Since respondent No.2 has the power to review his own order, the petitioners cannot be allowed to contend that instead of reviewing the order, respondent No.2 ought to have referred the matter to the Tribunal for adjudication, and more so when Section 25-M(7) of the Act *inter alia* states that the appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (4) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication. The power vested in respondent No.2 under Section 25-M(7) of the Act, being discretionary, it is for respondent No.2 to exercise his discretion and the petitioner cannot be allowed to contend that respondent No.2 should have referred the matter to a Tribunal for adjudication. In that view of the matter, reliance placed by the petitioners on the judgment of this Court in **Voltas Limited v. Government of A.P.**, is of no avail to them.

Admittedly, the notice dated 31.01.2002, was issued in the name of respondent No.2, and though in pursuance of the said notice, respondent No.3 is alleged to have heard and circulated the file to respondent No.2, the fact remains, the order dated 07.02.2002, was passed by respondent No.2. Though to review the said order, the petitioners filed review petition on 13.02.2002, the fact remains, when respondent No.3 purporting to act on the said review petition, issued notice dated 07.03.2002, respondent No.5 filed writ petition in W.P. No. 5058 of 2002, and in the writ appeal in W.A. No. 970 of 2002, filed assailing the order dated 01.12.2003, a Division Bench of this Court, vide judgment dated 07.07.2004, set aside the notice dated 07.03.2002 issued by respondent No.3, and gave liberty to respondent No.2 to issue fresh notice, if he felt that the order dated 07.02.2002 needed to be reviewed. It is in pursuance of the judgment of a Division Bench of this Court in W.A. No. 970 of 2002, dated 07.07.2004,

respondent No.2 issued notice to the petitioners and respondent No.5, and by reason of the order dated 23.07.2005, reviewed the order dated 07.02.2002, confirmed the same.

The contention of the petitioners that respondent No. 2 has not heard them cannot be accepted for the reason that the order dated 07.02.2002, which the petitioners contend was passed by respondent No.2 after perusing the notings in the file made by respondent No.3 after hearing the parties, the fact remains, the said order dated 07.02.2002, stood merged with the order dated 23.07.2005, passed by respondent No.2 in the review petition. A reading of the order dated 23.07.2005, passed by respondent No.2 in the review petition, would disclose that pursuant to the judgment of the Division Bench of this Court in W.A. No. 970 of 2002, dated 07.07.2004, he had called upon the petitioners as well as respondent No.5 to put forth their respective stands, and upon considering the stands taken by them in their representations dated 16.12.2004 and 14.12.2004 respectively, directed the Deputy Commissioner of Labour and the Assistant Commissioner of Labour, to verify and file a verification report of the respective stands taken by the petitioners and respondent No.5, and having considered the verification report, felt that there was no merit in the arguments advanced on behalf of the petitioners for review of the order dated 07.02.2002, passed by him, granting permission to layoff 24 workmen. The order dated 23.07.2005, having been passed by respondent No.2 after affording opportunity to the petitioners as well as respondent No.5, as directed by the Division Bench of this Court in W.A. No. 970 of 2002, the petitioners cannot be allowed to contend that respondent No.2 passed the impugned order without hearing them.

It is the contention of the petitioners that “accumulated losses” is not a ground mentioned in Section 2(kkk) of the Act, for ordering layoff. To consider this contention, it is appropriate to quote Section 2(kkk), which defines “layoff” to mean the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or natural calamity or for any other connected reason to give employment to workman whose name is borne on the muster rolls of his industrial establishment and who has been retrenched. Though Section 2(kkk) does not reflect “accumulated losses” to be a ground for ordering layoff, a reading of the impugned order, which quoted the observations

made by the Deputy Commissioner and Assistant Commissioner of Labour in their verification report shows that about 168 needle machines have not been functioning since 4-5 years for want of orders from the buyers. When there are said to be no orders and no buyers for the goods produced by the company, the question of continuing the members of the petitioner for producing the goods does not arise, for if the workmen are continued and allowed to produce the goods, it would result in accumulation of stocks, which is one of the ground mentioned in Section 2(kkk) to order layoff. "Accumulation of stocks", has been treated to be a ground for ordering lay-off as it fell within "connected reasons" mentioned in 2(kkk) of the Act.

In **Sae Mazdoor Union v. Labour Commr.**[2], the Madhya Pradesh High Court considered the validity of the permission granted by the Labour Commissioner, to the company to lay-off its workmen, and it held as follows:

In **Hope Textiles Ltd. v. State of Madhya Pradesh**[3], the case before this Court was with regard to permission for lay-off because there was disconnection of power supply and financial crisis due to non-receipt of sanction from the Government to sell the land belonging to the industry, and it was observed that financial stringency could not be accepted as a reason for laying off of the workmen and the ground was absolutely irrelevant. In the present case, the reason advanced before the first respondent was that it was impossible to run the industry as the industry had no orders in hand. Learned counsel for the Supreme Court in **Management of K. Estate v. Rajamanickam**[4], to point out that if the reason is so inextricably connected with any of the reasons contained in S.2(kkk), then it is a case which falls under the heading of "for any other connected reason" and, therefore, lay-off was permissible on the said ground. In the above case, it was observed that if there is a strike or slowing down of production in one part of establishment and if lay-off is the consequence, the reason for which lay-off has taken place would undoubtedly be similar to the reasons specified in the definition. In the present case, it is clear that it was not possible for want of adequate orders to engage workmen and 50 per cent of the labour had been kept idle for a long period. It is not expected that the management in fond hope of getting orders would continue production and accumulate stocks for which there is no foreseeable market. If it does so, the action would itself depicit that the employer had deliberately brought about a situation necessitating lay-off and the action would be exposed to bring branded as mala fide, as observed in **Tatanagar Foundry Company v. Their Workmen**[5]. It is not necessary that the resultant situation should be first created before application for permission to lay-off the employees is made. The fact that the situation of accumulation of stock would become inevitable if workers were not laid-off, would therefore, in my considered view, fall squarely within the scope of the connected reasons. Under the circumstances, it cannot be said that the application for permission did not reflect any ground on the basis of which respondent No.1 could have objectively considered the case for grant of such permission.

While it is true that on the basis of the concession of the workmen unions before respondent No.1, decision could not have been taken for grant of permission for lay-off. In the present case, since the ground itself depicts that continuance of

production would result only in piling up of the stocks and the accumulated stock is very much a ground covered by S.2(kkk). It was quite permissible for respondent No.1 to grant permission having regard to the genuineness and adequacy of the reasons for such lay-off and the interest of the workmen and all other relevant factors. Even respondents 3 and 4 unions in their return have clearly admitted that for want of sufficient work orders the company could not continue manufacturing activities and majority of employees who had reported for duty were virtually staying idle for want of work. It has, in particular, been pointed out by the respondent-unions that the management was seriously considering closing down the industry or retrenchment of the employees. The contention of the learned counsel for the petitioner, in the above facts that since the unions had also acted in the interest of the majority of employees, even assuming that they were not representing all of them, and there was every likelihood of the closure of the industry or retrenchment being the only alternative, if permission was granted keeping these factors in mind, merely because a union has shown dis-satisfaction more for creating problems for the workmen than for solving them, extraordinary jurisdiction under Art. 226 of the Constitution should not be exercised to grant the relief claimed by the petitioner, especially when the reason for which permission has been granted is very much, a reason connected with the reasons contained in S. 2(kkk), deserves to be accepted. Since in the order Annexure P2 as also the order Annexure P1 passed in review, the ground has been considered as germane and adequate for lay-off of the workmen and the permission has been granted keeping the interests of the workmen in mind, I do not find any substance in the contention of the petitioner that on the ground as projected before the specified authority permission could not have been granted under S. 25M of the Act.

From the above, it is clear that when there are no orders, continuance of production would lead to accumulation of stocks, which can be taken as one of the grounds falling within the scope of “connected reasons” mentioned in Section 2(kkk) of the Act, for granting permission for lay-off. In the instant case, as stated above, the company had no orders in hand, and any continuance of production in the company, would lead to accumulation of stocks, which would squarely fall within the scope of “connected reasons” mentioned in 2(kkk) of the Act, and in such circumstances, no exception can be taken to the order dated 23.07.2005, passed by the respondent No.2, confirming the order dated 07.02.2002, ordering layoff of 24 workmen.

There is no merit in the writ petition, and the same is accordingly dismissed.

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N.V. RAMANA, J.

Dated: 2nd January, 2007.
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[1] 2005 (6) ALD 157

[2] 2001 (4) L.L.N. 1105

[3] 1993-I L.L.J. 603

[4] AIR 1960 SC 893

[5] AIR 1962 SC 1533